

REMARKS:

Claims 1-5 are pending in the application. By this amendment, claim 1 is canceled in favor of new claim 6, and claims 2 and 3 are amended to change dependencies accordingly. Applicant requests reconsideration and allowance in view of the above amendments and the following remarks.

Status of Amendments

Two prior amended versions of claim 1 were not entered because of errors with MS Word Track Changes. For convenience, Applicant has now canceled claim 1 in favor of new claim 6. Of note is claim 6's recitation of "programmed to" language in place of "adapted to" language.

Specification Changes

Consistent with the revised claim language, Applicant has amended various paragraphs of the specification to refer to the second controller as being programmed and to the controller establishing by its programming the various states of the compressor. Applicant submits that one having skill in the art would know that modern controllers are necessarily programmed, such that the present amendments do not introduce new matter. Accordingly, Applicant requests entry of the specification amendments.

Priority

The Office Action raises certain issues with regard to the claim for priority and perfection thereof. Applicant has addressed those concerns in the two previous attempts to respond to the Office Action (the amendments in those Responses not having been entered due to MS Word Track Changes errors, as noted above). Accordingly, the Examiner's attention is directed to those two previous submissions, which are of record even if the amendments presented therein were not entered, for a response to the Examiner's priority concerns. **If the previous submissions do not obviate the Examiner's concerns and perfect Applicant's claim for**

priority, it is requested that the Examiner contact Applicant's undersigned representative promptly so that any remaining issues may be resolved most expeditiously.

Rejection Under 35 U.S.C. § 102

Claims 1-4 are rejected under 35 U.S.C. § 102(b) as anticipated by Cunkelman, U.S. 6,390,779. In particular, the Examiner asserts that Cunkelman discloses first and second control members 10 and 40. With regard to the first control member, the Examiner asserts that, as recited by the claims, it “is inherently active when controlling the compressor and passive when not controlling the compressor. With regard to the second control member, on the other hand, the Examiner asserts that

Applicant functional claims [sic] a number of situations where the second control member is “configured” to be able to do something. All that is required of the prior art to meet this limitation is that the prior art device must be able to perform this function. Here Cunkelman easily satisfies the requirement of being able to perform the functions claimed by Applicant.

Applicant requests reconsideration and withdrawal of this rejection.

In particular, new independent claim 6 recites more concretely that the second controller is programmed to perform the claim-recited function. In Cunkelman, in contrast, there is no disclosure of such function being performed by either the dedicated microprocessor 40 or the locomotive computer 10. Therefore, it follows that Cunkelman does not disclose the controllers as being programmed to perform the claim-recited function. Accordingly, Cunkelman does not anticipate the claimed invention, and Applicant requests that the rejection be withdrawn.

Double Patenting Rejection

Claims 1-5 are rejected for obviousness type double patenting. Applicant has traversed the rejection in the previously submitted responses. Accordingly, the Examiner’s attention is directed to those two previous submissions, which are of record even if the amendments presented therein were not entered, for a response to the double patenting rejection. **If the previous submissions do not overcome the rejection, it is requested that the Examiner**

contact Applicant's undersigned representative promptly so that any remaining issues may be resolved most expeditiously.

In view of the foregoing, Applicant submits that all claims are in condition for allowance, and timely Notice to that effect is respectfully requested.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: 0173.046.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner may directly contact the undersigned by phone to further the discussion.

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Respectfully submitted,



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